Supreme Court, U. S.
FILED
DEC 29 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-88

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION AND WELFARE,
Appellant,

v.

RUBY M. LUCAS, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

BRIEF OF APPELLEES

THOMAS W. PEARLMAN
812 Industrial Bank Building
111 Westminster Street
Providence, Rhode Island 02903
Attorney for Appellees

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

	Page
CITATIONS	i
RELEVANT STATUTES	2
QUESTION PRESENTED	4
STATUTORY SCHEME	5
STATEMENT OF THE FACTS	6
ARGUMENT	8
I. ILLEGITIMACY IS A SUSPECT CLASSIFICATION, AND THE STATUTE IS UNCONSTITUTIONAL BECAUSE IT CANNOT WITHSTAND STRICT SCRUTINY	8
II. IF THIS COURT DECLINES TO HOLD THAT ILLEGITIMACY IS A SUSPECT CLASSIFICATION, THE STATUTE IS UNCONSTITUTIONAL BECAUSE THE CLASSIFICATION DOES NOT BEAR A RATIONAL RELATIONSHIP TO A LEGITIMATE GOVERNMENTAL PURPOSE	11
CONCLUSION	14

TABLE OF AUTHORITIES

Cases:

Bolling v. Sharpe, 347 U.S. 497 (1954)	8
Dandridge v. Williams, 397 U.S. 471 (1970)	11
Flemming v. Nestor, 363 U.S. 603 (1960)	8
Frontiero v. Richardson, 411 U.S. 677 (1973)	8
Glona v. American Guarantee & Liability Insurance Co., 391 U.S. 73 (1968)	12

Page

Gomez v. Perez, 409 U.S. 535 (1973) 13

Jimenez v. Weinberger, Secretary, Department of Health, Education & Welfare, 417 U.S. 628 (1974) 11,12,13

Labine v. Vincent, 401 U.S. 532 (1971) 11

Levy v. Louisiana, 391 U.S. 68 (1968) 12

Lucas v. Mathews, Secretary, Department of Health, Education & Welfare, 390 F. Supp. 1310 (D., R.I., 1975) 9

New Jersey Welfare Rights Organization v. Cahill, 411 U.S. 619 (1973) 11

Richardson v. Belcher, 404 U.S. 78 (1971) 8,11

San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) 8,9

Schneider v. Rusk, 377 U.S. 163 (1964) 8

U.S. Department of Agriculture v. Moreno, 413 U.S. 528 (1973) 8,11

Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972) 9,12

Statutes:

42 U.S.C. § 402(d)(1) 2

42 U.S.C. § 402(d)(3) 2,5

42 U.S.C. § 416(h)(2) 3

42 U.S.C. § 416(h)(3)(C) 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-88

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION AND WELFARE,
Appellant,

v.

RUBY M. LUCAS, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

BRIEF OF APPELLEES

MISCELLANEOUS

House-Senate Conference Committee Report, 111 *Cong. Rec.* 18387 (1965)

RELEVANT STATUTES

42 U.S.C. § 402(d)(1):

Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child –

(A) has filed application for child's insurance benefits,

(B) At the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and

(C) was dependent upon such individual –

* * *

(ii) if such individual has died, at the time of such death,

* * *

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits . . . .

42 U.S.C. § 402(d)(3):

A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at such time, such individual was not living with or contributing to the support of such child and –

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) or section 416(h)(3) of this title shall be deemed to be the legitimate child of such individual.

42 U.S.C. § 416(h)(2)

(A) In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this subchapter, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

(B) If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such insured individual under subparagraph (A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother or father, as the case may be, of such applicant went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of paragraph (1)(b), would have been a valid marriage.

42 U.S.C. § 416(h)(3)

An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not

deemed to be) the child of such insured individual under paragraph (2) of this subsection, shall nevertheless be deemed to be the child of such insured individual if:

* * *

(C) In the case of a deceased individual–

(i) such insured individual–

(I) had acknowledged in writing that the applicant is his son or daughter,
(II) had been decreed by a court to be the father of the applicant, or
(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his son or daughter,

and such acknowledgement, court decree, or court order was made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to have been the father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.

QUESTION PRESENTED

Does 42 U.S.C. § 416(h)(3)(C)(ii) violate the Due Process Clause of the Fifth Amendment in that it requires certain illegitimate children to prove that they were receiving support from their father at the time of his death yet does not require legitimate children and certain other illegitimate children to carry this burden?

STATUTORY SCHEME

A child of an eligible wage-earner is entitled to Surviving Child's Insurance benefits unless the wage-earner was not living with or contributing to the support of the child and 1) the child is neither the legitimate nor adopted child of the wage-earner, or 2) the child has been adopted by some other individual. 42 U.S.C. § 402(d)(3). Thus, apart from the situation of adopted children, legitimate children are automatically eligible to receive benefits while illegitimate children are not. Legitimate children need not overcome any further hurdles while illegitimate children must qualify under some other provision of the Social Security Act.

Illegitimate children may qualify for benefits if 1) under the laws of the state in which the insured wage-earner was domiciled, they would have the same status relative to taking intestate personal property as legitimate children, 2) their parents went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment, would have been a valid marriage, or 3) the wage-earner a) had acknowledged in writing that they are his children, b) had been decreed by a court to be their father, or c) had been ordered by a court to contribute to their support because they are his children. 42 U.S.C. § 416(h)(2)(A) and (B), 42 U.S.C. § 416(h)(3)(C)(i)(I), (II), and (III).

Illegitimate children who do not fall into any of these sub-classes must prove to the satisfaction of the Secretary that the wage-earner was their parent and was living with them or contributing to their support at the time of his death. 42 U.S.C. § 416(h)(3)(C)(ii). Thus, illegitimate children who do not qualify under 42

U.S.C. §416(h)(2)(A) or (B) or 42 U.S.C. §416(h)(3)(C)(i)(I), (II), or (III) must bear a heavy burden that legitimate children and illegitimate children who qualify under these provisions need not bear.

STATEMENT OF THE FACTS

Although never ceremonially married, Belmira Lucas, the plaintiff, and Robert Cuffee, the deceased wage-earner, lived together for eighteen years, from 1948 to 1966. Two children were born of this union: Ruby Marie Lucas on February 7, 1953, and Darin Edward Lucas on October 28, 1960. In 1966 plaintiff and Mr. Cuffee separated for about eighteen months, after which he died in June of 1968. On October 24, 1968, plaintiff filed for Surviving Child's Insurance benefits on behalf of the minor children on the earnings record of Mr. Cuffee. The Secretary denied benefits to the applicants, despite the finding of the Hearing Examiner at page 72 of the transcript of the hearing held on March 24, 1971* that Mr. Cuffee was the father of the two children. The Secretary found that Mr. Cuffee had not acknowledged his paternity in writing, had never been decreed by a court to be the father of the applicants, and had never been ordered by a court to contribute to the support of the applicants because they were his children. 42 U.S.C. §416(h)(3)(C)(i)(I),

*See Appendix page 36 which states as follows: "the thrust of the evidence rather clearly indicates that he was the father of both Darin Edward Lucas and Ruby Marie Lucas. However, in this particular matter a finding that he was the father of these children is academic unless it can be established by the evidence that he was contributing to the support of these children at the time that he died."

(II), and (III). The Secretary also found that plaintiff had not met the burden of proving that Mr. Cuffee had been living with or contributing to the support of the children at the time of his death. 42 U.S.C. §416(h)(3)(C)(ii).

Plaintiff then brought an action in the District Court of Rhode Island to review the Secretary's decision. The Court upheld the Secretary's findings but remanded the case for an administrative determination as to whether the children were the issue of a valid common law marriage under Rhode Island law, thus entitling them to take by intestacy a share of their father's personal property. 42 U.S.C. §416(h)(2)(A). The Secretary found that plaintiff and Mr. Cuffee had never entered into a valid common law marriage.

Plaintiff sought reversal of the Secretary's decision in the District Court on two grounds: that the Secretary had erred in his assessment of the evidence and the applicable Rhode Island law, and that 42 U.S.C. §416(h)(3)(C)(ii) was unconstitutional because it conditioned the applicants' eligibility on proof of actual dependency without requiring a similar showing of legitimate children and certain illegitimate children. Plaintiff moved for summary judgment.

As to the first claim, the Court affirmed the Secretary's findings. As to the second claim, the Court found that 42 U.S.C. §416(h)(3)(C)(ii) violated the Due Process Clause of the Fifth Amendment. *Lucas v. Mathews, Secretary, Department of Health, Education & Welfare*, 390 F. Supp. 1310 (D., R.I., 1975). The Secretary has appealed. A copy of said opinion is printed in the Jurisdictional Statement beginning at page 1a.

ARGUMENT

I.

ILLEGITIMACY IS A SUSPECT CLASSIFICATION, AND THE STATUTE IS UNCONSTITUTIONAL BECAUSE IT CANNOT WITHSTAND STRICT SCRUTINY.

It is well-established that standards of equal protection are inherent in the Due Process Clause of the Fifth Amendment. *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Schneider v. Rusk*, 377 U.S. 163 (1964); *Richardson v. Belcher*, 404 U.S. 78 (1971). This Court has developed alternative approaches to the examination of legislative classifications in the light of equal protection challenges. If the classification is a suspect classification, strict scrutiny is appropriate. *Frontiero v. Richardson*, 411 U.S. 677 (1973). If the classification is not suspect, then it must bear a rational relationship to a legitimate governmental purpose. *U.S. Department of Agriculture v. Moreno*, 413 U.S. 528 (1973); *Flemming v. Nestor*, 363 U.S. 603 (1960).

A suspect class is one which has been "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28 (1973). A class is even more suspect if its membership is determined by the presence of an immutable characteristic acquired at birth. *Frontiero v. Richardson, supra.*

A classification based on illegitimacy has all of the attributes of a suspect classification. Illegitimates have

always been discriminated against in America. They have been made to suffer the social reproach heaped on them by others. They have suffered at the hands of the majoritarian political process. Illegitimacy is an immutable characteristic acquired at birth. This Court has described the situation of illegitimates well:

> "The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where—as in this case—the classification is justified by no legitimate state interest, compelling or otherwise." *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175-176 (1972).

Illegitimate children thus desperately need the protection given by the judicial system to suspect classes. See *Lucas v. Mathews, supra.*

This Court has stated that

> "strict scrutiny means that the [government's] system is not entitled to the usual presumption of validity, that the [government] rather than the complainants must carry a 'heavy burden of justification,' that the [government] must

> demonstrate that its . . . system has been structured 'with precision,' and is 'tailored' narrowly to serve legitimate objectives and that it has selected the 'less drastic means' for effectuating its objectives . . ." *San Antonio Independent School District v. Rodriguez*, supra, 411 U.S. at 16-17.

If strict scrutiny is applied in the instant case, it is clear that 42 U.S.C. § 416(h)(2)(C)(ii) cannot stand, even if we accept for the moment the Secretary's strained interpretation of the statute's purpose. The Secretary claims that Congress intended that child's survivor benefits should replace only the actual support lost by virtue of the wage-earner's death and did not intend that benefits should be given to those children who had a right to support. The statutory scheme is not structured with precision or tailored narrowly to achieve the purpose claimed by the Secretary. Legitimate children are irrebuttably presumed to have received support from the wage-earner at the time of his death–yet it must be true that many legitimate children have not in fact received such support. Most illegitimate children do not have the benefit of the presumption, although many, if not most, may in fact have received such support. At any rate, it is the government that must carry the heavy burden of justification, a burden that it cannot meet.

II.

IF THIS COURT DECLINES TO HOLD THAT ILLEGITIMACY IS A SUSPECT CLASSIFICATION, THE STATUTE IS UNCONSTITUTIONAL BECAUSE THE CLASSIFICATION DOES NOT BEAR A RATIONAL RELATIONSHIP TO A LEGITIMATE GOVERNMENTAL PURPOSE.

If this Court declines to hold that illegitimacy is a suspect classification, then the classification must bear a rational relationship to a legitimate governmental purpose. *U.S. Department of Agriculture v. Moreno, supra.* Although *Dandridge v. Williams*, 397 U.S. 471 (1970), stands for the proposition that in the area of economics and social welfare the test is whether the classification has some reasonable basis, *Dandridge* is distinguishable since it involved the allocation of finite state resources, an element that is completely missing from the instant case. See *Jimenez v. Weinberger, Secretary, Department of Health, Education & Welfare*, 417 U.S. 628 (1974). Here there are no implications for our system of federalism requiring deference to the decision of a state legislature, as were present in *Richardson v. Belcher, supra, San Antonio Independent School District v. Rodriguez, supra,* and *Labine v. Vincent*, 401 U.S. 532 (1971). The rational relationship in cases such as the instant case must be clear and strong. Child's survivor benefits may be indispensable to the health and well-being of children such as the applicants. See *New Jersey Welfare Rights Organization v. Cahill*, 411 U.S. 619 (1973). And this Court has recognized the discrimination against illegitimate children in our society and has been exacting when

dealing with statutes such as the one at issue here. *Jimenez v. Weinberger, supra; Weber v. Aetna Casualty & Surety Co., supra;* see also *Levy v. Louisiana,* 391 U.S. 68 (1968) and *Glona v. American Guarantee & Liability Insurance Co.,* 391 U.S. 73 (1968).

Before the rational relationship test can be applied, the Congressional purpose must be determined. The final and definitive statement of the purpose of the statute can be found in the House-Senate Conference Committee Report at 111 *Cong. Rec.* 18387 (1965)–"A child would be paid benefits based on his father's earnings without regard to whether he has the status of a child under State inheritance laws if the father was supporting the child *or had a legal obligation to do so*" (emphasis added). Thus, Congress realized that those who were not in fact receiving support at the time of the wage-earner's death but who had a legal right to such support had as great a need for surviving child's benefits as those who were receiving such support. Unfortunately, when Congress attempted to achieve this commendable purpose through the statute, it did not measure up to the task.

In *Jimenez,* this Court ascertained the purpose of the Social Security Act in providing support for the dependents of a disabled wage-earner. In that case, as here, the Secretary claimed that the Social Security Act was intended to replace only the actual support lost by virtue of the wage-earner's inability to earn income (in that case due to disability and here due to death). But this Court emphatically rejected this claim:

> "Under this view the Act's purpose would be to replace only that support enjoyed prior to the onset of disability; no child would be eligible to receive benefits unless the child had experienced actual support from the wage earner prior to the disability and no child born after the onset of the wage earner's disability would be allowed to recover. We do not read the statute as supporting that view of its purpose." 417 U.S. at 634.

Thus, this Court has established that the true purpose of the Act is the purpose that is argued for in this brief.

The statutory scheme involved in the instant case is not rationally related to the purpose intended by Congress, that of supplying benefits both to children who received support and to children who had a legal right to support. Legitimate children and both subclasses of illegitimate children stand on equal footing with regard to their right to paternal support. *Gomez v. Perez,* 409 U.S. 535 (1973). Since 42 U.S.C. § 416(h)(3)(C)(ii) requires certain illegitimate children who already possess this right to support to prove actual support, without requiring such a showing by legitimate and certain other illegitimate children, the statute violates the Due Process Clause of the Fifth Amendment.

The statute is unconstitutional even under the Secretary's interpretation of its purpose. Under his interpretation, illegitimates who do not qualify under one of the other provisions of the Act are required to prove support because of a factor over which they have no control. They are treated differently because their fathers have not fulfilled their legal obligations to support them. The statute punishes them for having been neglected. The purpose claimed by the Secretary is not a legitimate governmental interest.

In addition, the statutory scheme is not rationally related to this purpose. As in *Jimenez,* legitimate and

certain illegitimate children are irrebuttably presumed dependent upon the parent, while all other illegitimate children "are denied a parallel right to the dependency presumption under the Act." 417 U.S. at 635. Certainly many legitimate children who receive benefits did not in fact receive support at the time of the wage-earner's death. Certainly many illegitimates who qualify for benefits under 42 U.S.C. § 416(h)(2)(A) or (B) or 42 U.S.C. § 416(h)(3)(C)(i)(I), (II), or (III) did not in fact receive such support. And certainly many, if not most, illegitimate children who did not qualify under these provisions did in fact receive such support. There is no reason whatsoever to assume that more legitimate children and more illegitimate children who qualified for benefits under these provisions received support than did illegitimate children who did not qualify under these provisions. The Secretary has presented no hard evidence to support this assumption. See *Frontiero v. Richardson, supra.* Moreover, this unfounded assumption denigrates this sub-class of illegitimate children. It presumes that such illegitimates are less desirable in the eyes of their parents and are less likely to receive their love and support. This attitude can only serve to perpetuate the discrimination directed against these helpless and innocent children.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the Court should declare 42 U.S.C. sec.

416(h)(3)(C)(ii) unconstitutional and affirm the judgment of the District Court of Rhode Island.

Respectfully submitted,

THOMAS W. PEARLMAN
812 Industrial Bank Building
Providence, R.I. 02903
(401) 421-4343

December 18, 1975

Collaborating on Brief

David Harris Gikow and Edward N. Beiser
Harvard Law School